REMARKS

The present remarks are in response to the Rejection dated February 24, 2004, where the Examiner rejected claims 19-32. The Applicant respectfully responds to Examiner's Detailed Action and requests the Examiner place all the claims in the application in a state of allowance.

A.   Rejection of Claims Under 35 USC 102

The Examiner has rejected independent claims 19 and 26, and dependent claims 20-23, 28 and 29 under 35 USC 102(e) as being anticipated by Sutton et al., U.S. Patent 6,600,931 (hereinafter referred to "Sutton '931"). Applicant respectfully disagrees. The Applicant respectfully contends that the Examiner has misread and misapplied Sutton '931 to independent claims 19 and 26 as described in further detail below.

Additionally, the Applicant respectfully submits that that use of the term "processor" does not read on the term "switch" or "switch assembly" in Sutton '931. The Applicant respectfully contends that the definitions of switch and processor are substantially different.

Furthermore, the Applicant respectfully submits that Applicant's hand off is associated with data obtained from the first antenna circuit and from the second antenna circuit. Sutton '931 teaches only a switch that receives instructions from a controller where the communication signals from the Sutton controller are NOT associated with the first antenna circuit and the second antenna circuit.

1.   Sutton '931 has been misread.

In the Examiner's Action, the Examiner states that the Applicant's "processor coupled to the first antenna circuit and to the second antenna circuit" reads on the Sutton '931 "switch assembly responsive to input commands generated by a mobile station control processor, see col. 6, lines 42-45." See Examiner's Action at Page 2. The Applicant respectfully submits that the Examiner has misread Sutton '931.

As the Federal Circuit stated in *W.L. Gore & Associates v. Garlock, Inc.,* [1] "anticipation requires the disclosure in single prior art reference of each element of the claim under consideration."

In Sutton '931, the switch assembly 50 is responsive to input commands from lines 72 and 74, which are associated with mobile station controller 76. **The switch assembly 50 in Sutton '931 receives digital input commands from controller 76 via lines 72 and 74.** Sutton '931, col. 6, lines 42-45. These lines 72 and 74 communicate logic 1 and logic 0 values, which are generated by the controller 76. Sutton '931, col. 7, lines 29-33. The controller 76 in Sutton '931 is not operatively coupled to any other device, processor, switch or system.

The Applicant claims "a processor coupled to a first antenna circuit and a second antenna circuit." The first antenna circuits and the second antenna circuit receive RF signals. See Applicant's Patent Application, pp. 5 - 8. The text is Sutton '931 at col. 6, lines 42-45 is not directed to an antenna circuit, but to digital communications generated by Sutton's controller 76.

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[1] W.L. Gore & Associates V. Garlock, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied,* 469 U.S. 851 (1984).

Thus, the Applicant respectfully argues that Applicant's processor that is coupled to an antenna circuit, which receives RF communications, is substantially different from Sutton's "switch assembly" that receives instructions from a controller that communicates logic 1 and 0 values. This distinction is substantial and Applicant respectfully argues that the Examiner has not provided a 102 reference that teaches each element of the independent claims.

2. **The Applicant's "processor" is substantially different from the Sutton "switch."**

In the Examiner's Action, the Examiner states on Page 2 that the Applicant's "processor" reads on the Sutton '931 "switch assembly." The Applicant respectfully submits that that the use the term "processor" does not read on the term "switch" or "switch assembly" in Sutton '931. The Applicant respectfully contends that the definitions of switch and processor are substantially different.

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. MPEP 2111 citing *In re Hyatt*, 211 F. 3d 1367, 1372 (Fed. Cir. 2000). This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. MPEP 2111.01.I citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). As further stated by the MPEP:

> It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflect both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F. 3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003) (Dictionary definitions were used to determine the ordinary and customary meaning of the words "normal" and "predetermine" to those skilled in the art. In construing

claims, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor. See MPEP 2111.01.II, Rev. 2, May 2004, pp. 2100-48 to 49.

Here, the Merriam-Webster On-line dictionary was consulted to identify the distinction between Applicant's "processor" and the Sutton "switch assembly." A definition was identified for the terms "processor", "switch" and "assembly."

The applicable Merriam-Webster On-line definition of a "switch" states that a switch is "a device for making, breaking, or changing the connections in an electrical circuit." See Applicant's Exhibit A. Additionally, the applicable Merriam-Webster On-line definition of an "assembly" is "the fitting together of manufactured parts into a complete machine, structure, or unit of a machine." See Applicant's Exhibit A. Based on the individual definitions of the "switch" and the "assembly," the Applicant submits that the appropriate definition of a "switch assembly" is: a grouping of devices for making, breaking or changing electrical connections. Support for this interpretation is provided by Sutton's distinction between a switch assembly 50, an antenna transducer 62 and 64, and a mobile station control processor 76.

The Applicant submits that the applicable Merriam-Webster On-line definition of "processor" is the second definition that states the processor "the part of the computer system that **operates on data ...** " (emphasis added). See Applicant's Exhibit A. Please note, that the Applicant also searched this word at the website www.dictionary.com, and again the Applicant submits that the appropriate definition of processor is based on **data** processing. See Applicant's Exhibit A.

Thus, by definition, the Applicant's use of the term "processor" presumes that Applicant's "processor" operates on **data**. The Sutton "switch assembly" is simply a grouping of switches. As stated in the Applicant's independent claims, the "processor" is configured to operate on data by *inter alia* **operating** the first antenna circuit, monitoring a second communication signal, and performing hand off communication. The Applicant's "processor" is performing operations based on data that it is receiving.

By definition, the Sutton "switch assembly 50" does NOT operate on data. The Sutton "switch assembly" 50 is a passive device that is *capable* of performing switching functions.

Therefore, Applicant respectfully submits that the Applicant's "processor" is substantially different from a "switch" or a "switch assembly," and that Applicant's "processor" does not read on the Sutton '931 "switch" or "switch assembly," because Applicant's "processor" operates on data, and the Sutton "switch" or "switch assembly" does NOT operate on data. This distinction is substantial and Applicant respectfully argues that the Examiner has not provided a 102 reference that teaches each element of the independent claims.

3.   The monitoring and hand off operations performed by Applicant's processor are associated with the first antenna circuit and/or the second antenna circuit. However, the switching in Sutton '921 is NOT associated with the first antenna circuit and second antenna circuit.

It is not enough that the prior art reference disclose all the claimed elements in isolation for an anticipation rejection. Rather, as stated by the Federal Circuit, "anticipation requires the presence in a single prior art reference

disclosure of each and every element of the claimed invention, *arranged as in the claim.*"[2]

The Examiner's Action appears to argue that Sutton '931 teaches *monitoring* a second communication signal and cites to col. 6, line 1-54 in Sutton '931 to support this contention. Additionally, the Examiner appears to argue that Sutton '931 teaches handoff to the second communication signal mode *based on* the first communication signal and the second communication signal; the Examiner cites to col., line 19 to col. 8, line 11 to support this argument.

The Applicant respectfully submits that no mention of "monitoring" is made in Sutton '931. Firstly, Sutton '931 teaches a "switch assembly" that receives instructions from controller 76, which is not operatively coupled to any other device, except the switch assembly. The Sutton switch assembly 50 does NOT *monitor* a second communication signal because the Sutton "switch assembly" does NOT operate on data. (See Arguments above which are hereby incorporated by reference.) Additionally, the Sutton controller 76 does not monitor a second communication signal, because the controller 76 is adapted to ONLY communicate logic 1 and logic 0 values. Sutton '931 gives no reason for the controller 76 to communicate logic 1 and logic 0 values.

Additionally, Applicant respectfully contends that Sutton '931 does not teach handoff or switching based on Applicant's first communication signal and Applicant's second communication signal, which are associated with the Applicant's first antenna circuit and the Applicant's second antenna circuit,

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[2] Lindemann Maschinenfabric GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir.1983)) (emphasis added).

respectively. The Examiner shall note that each of the Applicant's independent claims provide a clear nexus between a first antenna circuit and a first communication signal, and the second antenna circuit and the second communication signal. Thus, the Applicant's first communication signal is associated with the first antenna circuit, and the Applicant's second communication signal is associated with the second antenna circuit.

The language that Examiner references in Sutton '931 at col. 7, line 19 to col. 8, line 11 speaks to the switch assembly 50 receiving logic 1 and logic 0 values from controller 76. The logic 1 and logic 0 values generated by the Sutton controller 76 are NOT associated with a first antenna circuit or a second antenna circuit, because the controller 76 is ONLY transmitting in a single direction, i.e. from the controller 76 to the switch assembly 50. The controller 76 in NOT operatively coupled to a first antenna circuit or a second antenna circuit. In fact, the only device the Sutton controller 76 is operatively coupled to is the Sutton switch assembly 50. Thus, the Sutton switch assembly 50 only receives communication signals from the controller 76, which are NOT associated with the first antenna circuit and the second antenna circuit.

Again, the Applicant respectfully argues that the Examiner has not provided a 102 reference that teaches each element of the independent claims.

4. The Applicant has overcome the anticipation rejection for the dependent claims.

With respect to the remaining dependent claims 20-23, 26, 28 and 29, each of these claims depend on independent claims 19 and 26, which the

Applicant has argued overcome the Examiner's anticipation rejection. As described above, Sutton '931 does not disclose the Applicant's claimed limitations. Individually, each of the arguments made above supports the conclusion that the Applicant's claims should overcome the 102 novelty rejection that is asserted by the Examiner.

Since the independent claims overcome the 35 USC 102 rejection, the Applicant respectfully submits that each of the dependent claims identified by the Examiner also overcomes the anticipation rejection. Furthermore, the arguments made above also provide compelling arguments for overcoming any obviousness type rejection that is based on Sutton '931.

B.   Rejection of Claims Under 35 USC 103

Regarding claims 24, 25, 30 and 31, the Examiner rejected these claims as being unpatentable over Sutton '931, in view of Burdick '820. In view of the independent claims 19 and 26 described above, the Applicant contends that the 103 rejection is moot because the independent claims 19 and 26 are patently distinguishable from Sutton '931 and Burdick '820.

With respect to claims 24 and 30, the Examiner refers to Burdick '820 at col. 51, line 61-65, which describes the applications for a *short range* wireless communication system to interface with cell phones or cordless telephones and which is standards compliant. Applicant fails to see a suggestion to combine or modify the Sutton '931 and Burdick '820 references to describe a processor that operates the first antenna circuit and the second antenna circuit, *monitor* a

communication signal, and to performs a handoff based on a first communication signal and a second communication signal.
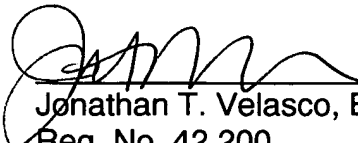
With respect to claims 25 and 30, the Examiner refers to Burdick's disclosure that the second antenna is disposed approximately orthogonal to the first antenna at col. 34, lines 1-15. Applicant fails to see a suggestion to combine or modify the Sutton '931 and Burdick '820 references to describe a processor that operates the first antenna circuit and the second antenna circuit, *monitor* a communication signal, and to performs a handoff based on a first communication signal and a second communication signal.

C.   <u>Conclusion</u>

For all the foregoing reasons, reconsideration and allowance of claims 19-32 pending in the present application are respectfully requested.

Respectfully Submitted;

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